APPENDIX

IN COURT OF APPEALS OF KENTUCKY

KENTUCKY BAR ASSOCIATION, *Complainant,*

v.

JOHN W. COLLIS, *Respondent.*

Rendered: May 9, 1975

Per Curiam

This is a disciplinary proceeding in which the Board of Governors of the Kentucky Bar Association found respondent guilty of unprofessional conduct and recommended that he be permanently disbarred from the practice of law.

A six-count charge was filed against respondent by the Kentucky Bar Association. A trial committee appointed in accordance with the rules heard the testimony of witnesses and after finding the respondent guilty on all counts recommended a reprimand. The Board of Governors at a subsequent meeting considered the record, found the respondent guilty on all counts, and recommended that the respondent be permanently disbarred from the practice of law. In response to the rule issued in accordance with the recommendation of the Board of Governors, respondent moved for an extension of time to file a supplemental brief after taking of additional evidence and issued a *subpoena duces tecum* served on the secretary of the Kentucky Bar Association to produce all records relating to the disciplinary proceeding against the respondent, including the minutes of the meeting of the Board of Governors together with a notice to the secretary of the Kentucky Bar Association to take his deposition. A motion to quash the subpoena and notice was granted by this court.

Respondent alleges that some sinister influence was at work because of the wide disparity between the recommendation of the trial committee and that of the Board of Governors. We consider the taking of further evidence and examination of the records of the meeting of the Board of Governors as to the reasons, if any, for the disparity between the recommendation to be irrelevant. We again point out that "the report and recommendations of the trial committee are only advisory to the Board of Governors, as are the Board's recommendations to this court. * * * This means, of course, that in the end this court must be judge of the factual as well as the legal issues and of the final action to be taken." *Kentucky State Bar Association* v. *Stivers, Ky.*, 475 S.W.2d 900, 903 (1972).

We review the record and arrive at our own conclusion as to the proper disposition of the case. The record here is voluminous and covers in minute detail every aspect of the counts contained in the charge. Without a tedious detailing of the facts, the record clearly discloses that in three cases the respondent wrongfully withheld his clients' funds for varying periods of time, and in each case one or more times issued checks which were returned for "insufficient funds." The respondent's conduct as revealed in this record is so bizarre that we cannot imagine any reasonable explanation, and the attempted explanation for the conduct strains the bounds of credulity. In short, we find no satisfactory explanation which could mitigate the seriousness of respondent's conduct. We are of the opinion that the conduct of respondent portrays such a pattern of dishonesty and lack of ethical standards in dealing with his clients, that he is no longer fit to be a member of the bar. See *Kentucky Bar Association* v. *Tucker*, Ky., —— S.W.2d —— (rendered May 9, 1975).

The only inference which can be drawn from the testimony in this record is that the respondent converted his clients' funds to his own use. The checks returned for

"insufficient funds" from different bank accounts in the circumstances presented here, without any credible explanation, can only mean that the clients' funds were no longer intact and were converted by the respondent to his own use. This conduct warrants the permanent disbarment of an attorney from the practice of law. *In re Waxman*, 290 Ky. 277, 160 S.W.2d 587 (1942).

When an attorney converts his client's funds to his own use, he commits an offense greater and broader than a mere injury to his client, he brings the entire bar into disrepute in the eyes of the public. Such conduct evinces the unfitness of the attorney to be a member of the legal profession and an officer of the court.

Respondent's argument that his clients did not suffer a loss and that all funds were finally paid cannot be considered mitigating in the circumstances presented here.

The public is entitled to rely on an attorney's admission to the practice of law as a certification of the attorney's honesty, high ethical standards and good moral character. If the public's confidence in the legal profession is to be maintained, it is the duty of the Kentucky Bar Association and this court to remove those attorneys why by their dishonest actions in dealing with clients' funds and otherwise demonstrate a lack of these qualities. Respondent's conduct in our opinion is so reprehensible as to make him unworthy of public confidence and unfit to be an officer of the court.

Accordingly, it is ordered that respondent be and he is hereby permanently disbarred from the practice of law in

this Commonwealth, and he is required to pay the costs of proceeding.

All concur.

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Mandate

THE COMMONWEALTH OF KENTUCKY, THE COURT OF APPEALS

75 Term—May 9, 1975

KY. BAR ASSOCIATION

v.

JOHN W. COLLIS

Appeal from a Judgment of the

In C. of A. ..... Circuit Court

It is therefore ordered that the respondent, John W. Collis, is hereby permanently disbarred from the practice of law in the commonwealth of Kentucky, that he fully comply with the provision of RCA 3.390 and that the respondent is ordered to pay the costs of this action including the cost certified by the Kentucky Bar Association.

/s/ FRANCES JONES MILLS

Frances Jones Mills, C. C. A.

By ....., D. C.

Issued June 27, 1975
Respondent's Petition for Rehearing Denied.
6-27-75

Meeting
Board of Governors
Hilton Inn
Lexington, Kentucky
January 18, 1975

(Filed January 23, 1975)

The next order of business concerned the charge against John W. Collis. The Trial Committee composed of William E. Johnson, Chairman; Ephriam K. Lawrence, Jr., and John L. Arnett having tendered a written Report recommending that the Respondent be adjudged guilty of unprofessional conduct and reprimanded by the Court of Appeals of Kentucky. On motion duly made and seconded, the Report was ordered filed.

On call of the roll, the Respondent was adjudged guilty as charged by a vote of 15-0. Upon a second roll call, by a vote of 15-0, it was recommended that the Respondent be permanently disbarred from the practice of law in Kentucky.

IN RE: JOHN W. COLLIS

FINDINGS AND RECOMMENDATIONS OF THE BOARD OF GOVERNORS

The above case having been called and a report having been submitted and approved and the matter having been fully considered, the following finding and recommendation is made:

FINDING

That the Respondent, John W. Collis, be adjudged guilty.

RECOMMENDATION

It is respectfully recommended to the Kentucky Court of Appeals that John W. Collis be permanently disbarred

from the practice of Law in Kentucky and required to pay the costs in this action.

This January 18, 1975.

/s/ HENRY D. STRATTON
Henry D. Stratton, *President*

ATTEST:

/s/ LESLIE G. WHITMER
Leslie G. Whitmer, *Director*

RULE

on
Finding and Recommendation
of the
Board of Governors
of the
Kentucky Bar Association

THE COMMONWEALTH OF KENTUCKY,

To the Sheriff of Fayette County, GREETINGS:

The President of the Kentucky Bar Association having filed an order pursuant to RCA 3.370 recommending disciplinary action in the matter of

KENTUCKY BAR ASSOCIATION, *Complainant*

versus

JOHN W. COLLIS, *Respondent*

you are hereby commanded to summons Respondent to appear before the Court of Appeals, Frankfort, Kentucky, or file due response within 20 days after the service of this summons, and show cause, if any he has or can, why he should not be adjudged guilty of unprofessional conduct and disciplined therefore, and warn him that upon his failure to answer, the Rule herein shall be made absolute and you will make due return of this summons immediately upon the execution thereof.

Issued at Frankfort, Kentucky, this the 23rd day of January, 1975.

/s/ FRANCES JONES MILLS
Clerk, COURT OF APPEALS

COURT OF APPEALS OF KENTUCKY

KENTUCKY BAR ASSOCIATION, *Complainant,*

vs.

JOHN W. COLLIS, *Respondent.*

Report, Findings of Fact Conclusions of Law, Recommendation

This matter came on for hearing before the Trial Committee, pursuant to notice, on November 6, 1974, at 10:00 a.m. The Trial Committee after hearing testimony of witnesses, argument of counsel and having considered the exhibits introduced at the hearing and being fully advised, makes this Report, Findings of Fact, Conclusions of Law and Recommendation.

FINDINGS OF FACT

1. *Complaint concerning James Hollie Taylor.* The Respondent collected the proceeds payable to James Hollie Taylor under a policy of insurance with the Independence Life and Accident Insurance Company. These proceeds were paid to the Respondent on March 13, 1973. The Respondent placed such funds in his personal bank account. It was not until May 31, 1973, that the Respondent delivered a portion of the proceeds (after deducting a sum as a fee for services) to Mr. Taylor. The check from the Respondent to Mr. Taylor was dishonored when first presented for payment, but later honored.

2. *Complaint concerning Mike H. Pappas.* That the Respondent, without his client's knowledge and consent, failed to satisfy the outstanding mortgages which encumbered the property being purchased by Mike H. Pappas, prior to the closing of the transaction. While the evidence is conflicting as to whether Mr. Pappas was made aware of the existence of the Kissel Company mortgage prior to

December, 1972, this is not a fact of great importance since the Respondent knew of the mortgage and took no steps to promptly satisfy the mortgage indebtedness. Payments due on the mortgage were permitted by the Respondent to become delinquent and this caused harassment and worry to his client, Mr. Pappas. Many of the checks given by the Respondent to the Kissel Company for mortgage payments were returned by the bank because of insufficient funds being in the Respondent's bank account to satisfy the checks. The mortgage was paid by Respondent and Mr. Pappas lost no money thereby.

3. *Complaint concerning James E. Lewis.* The Respondent, as attorney for Mr. James E. Lewis, made an agreement with C.N.A. Insurance Company and Mr. Lewis whereby it was agreed that he (the Respondent) would deposit the agreed settlement amount in the sum of $7,090.63 in his escrow account until the Kentucky Workmen's Compensation Board approved the settlement. The settlement check was dated June 29, 1973, and was delivered to the Respondent on or about that date. Mr. Lewis endorsed the check, and left it with the Respondent on or about that same date. The Respondent did not file the necessary documents for approval of the settlement with the Workmen's Compensation Board until June 19, 1974. In the period of time from June 29, 1973, to November of 1973, the Respondent made random payments to Mr. Lewis. One of the payments was by a post dated check in the sum of $5,500.00 which check was deposited on September 19, 1973, and this check was returned to Mr. Lewis because of insufficient funds being in the account of the Respondent, but later the check was honored.

4. *Complaint concerning Mr. and Mrs. Bobby Shelton.* Mr. and Mrs. Bobby Shelton employed the Respondent on January 22, 1974, to file voluntary bankruptcy petitions on their behalf. Several months expired without the petitions being filed by the Respondent. During this

period, a suit was filed against Mr. and Mrs. Shelton on a claim which should have been listed on their bankruptcy petitions. Further, they were subject to harassing calls from their creditors during this period of time. The Respondent did not file the bankruptcy petition until after May 24, 1974.

Conclusions of Law

The Trial Committee concludes that the Respondent is guilty of unprofessional and unethical conduct in:

(1) *Complaint concerning James Hollie Taylor.* Failing to place funds paid to him by Independence Life and Accident Insurance Company for his client, James Hollie Taylor, in an identifiable escrow bank accout;

(2) Paying his client, James Hollie Taylor, more than two months after the insurance proceeds check was received, by a check on an account having insufficient funds therein;

(3) *Complaint concerning Mike H. Pappas.* Failing to promptly satisfy the mortgages after the closing of the purchase of the property so that Mr. Pappas would not be harassed or bothered by the mortgagees;

(4) Making payments on the mortgage to the Kissel Mortgage Company by checks which were returned to the Kissel Mortgage Company for insufficient funds;

(5) *Complaint concerning Mr. and Mrs. Bobby Shelton.* Failing to promptly file voluntary petitions in bankruptcy for his clients, Mr. and Mrs. Bobby Shelton;

(6) *Complaint concerning James E. Lewis.* Failing to promptly seek the approval of the Workmen's Compensation Board of the settlement between James E. Lewis and C.N.A. Insuranc Company, resulting in the client, Lewis, being inconvenienced and delayed in receiving settlement funds due him;

(7) Paying his client, James E. Lewis a portion of the funds due him, by a check which was returned because of insufficient funds.

RECOMMENDATION

That the Respondent be given a reprimand deemed proper by the Court of Appeals of Kentucky.

Respectfully submitted,

See separate attached statment

WILLIAM E. JOHNSON

/s/ JOHN L. ARNETT

/s/ EPHRIAM K. LAWRENCE, JR.

The undersigned agrees with the Report in so far as the Findings of Fact and Conclusions of Law. However, it is my opinion that the recommendation should be that the respondent be given a public reprimand and censure by the Court of Appeals of Kentucky.

/s/ WILLIAM E. JOHNSON